

Assembly Bill No. 18

Passed the Assembly July 23, 2009

Chief Clerk of the Assembly

Passed the Senate July 23, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 18661 of, and to add Sections 6225 and 18664 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 18, Committee on Budget. Taxation.

The Sales and Use Tax Law requires a person conducting business as a seller of tangible personal property in this state to obtain a permit from the State Board of Equalization for each place of business and also requires a person selling tangible personal property for storage, use, or other consumption in this state to register with the State Board of Equalization.

This bill would require a qualified purchaser, as defined, to register with the State Board of Equalization and to report and pay by April 15 the use tax owed for the previous calendar year, as provided. This bill would not apply to the purchase of a vehicle, vessel, or aircraft.

The Franchise Tax Board administers the Personal Income Tax Law and the Corporation Tax Law. Existing law authorizes persons that are required to withhold taxes from recipients of income to require the recipients of the income to provide that person with the recipient's name and address.

This bill would require the recipient of income to also provide the person paying the income with the recipient's social security number or other taxpayer identification number if requested by the person paying the income.

Existing law provides that the Franchise Tax Board may, by regulation, require any person to withhold an amount, determined by the Franchise Tax Board to reasonably represent the amount of tax due, as specified, and to transmit the amount withheld to the Franchise Tax Board at a designated time.

This bill would, in modified conformity with the federal income tax law, require backup withholding, as provided, at a rate of 7% on specified payments made on or after January 1, 2010, whenever such payments are subject to federal backup withholding.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session

for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on July 1, 2009.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on July 1, 2009, pursuant to the California Constitution.

The people of the State of California do enact as follows:

SECTION 1. Section 6225 is added to the Revenue and Taxation Code, to read:

6225. (a) In order to facilitate the collection of use tax imposed by this part, a qualified purchaser shall register with the board on a form prescribed by the board and shall set forth the name under which the qualified purchaser transacts or intends to transact business, the location of the qualified purchaser's place or places of business, and other information as the board may require.

(b) Article 1 (commencing with Section 6451) of Chapter 5 of this part shall apply to a qualified purchaser, except that a return showing the total sales price of the tangible personal property purchased by the qualified purchaser, the storage, use, or other consumption of which became subject to the use tax during the preceding calendar year, and which was not paid to a retailer required to collect the tax or which was not paid to a retailer the qualified purchaser reasonably believed was required to collect the tax, shall be filed, together with a remittance of the amount of the tax due, with the board on or before April 15.

(c) A "qualified purchaser" means a person that meets all of the following conditions:

(1) The person is not required to hold a seller's permit pursuant to this part.

(2) The person is not required to be registered pursuant to Section 6226.

(3) The person is not a holder of a use tax direct payment permit as described in Section 7051.3.

(4) The person receives at least one hundred thousand dollars (\$100,000) in gross receipts from business operations per calendar year.

(5) The person is not otherwise registered with the board to report use tax.

(d) This section shall not apply to the purchase of a vehicle, vessel, or aircraft as defined in Article 1 (commencing with Section 6271) of Chapter 3.5 of this part.

SEC. 2. Section 18661 of the Revenue and Taxation Code is amended to read:

18661. When necessary to make effective the provisions of this article or Article 4 (commencing with Section 18631), the name, address, social security number, or other taxpayer identification number of the recipient of income shall be furnished upon demand of the person paying the income.

SEC. 3. Section 18664 is added to the Revenue and Taxation Code, to read:

18664. (a) (1) Section 3406 of the Internal Revenue Code, relating to the backup withholding, shall apply, except as otherwise provided.

(2) For purposes of this section, the term “reportable payment,” as defined in Section 3406(b) of the Internal Revenue Code, shall include payments of items of income as defined in Section 18662, and any regulations thereunder, with respect to rents, prizes and winnings, compensation for services, including bonuses, and other fixed or determinable annual or periodic gains, profits, and income.

(3) This section shall not apply to either of the following:

(A) Payment of interest and dividends.

(B) Any release of loan funds made by a financial institution in the normal course of business.

(4) For the purposes of subparagraph (B) of paragraph (3), “financial institution” means any of the following:

(A) A depository institution, as defined in Section 1813(c) of Title 12 of the United States Code.

(B) An institution-affiliated party, as defined in Section 1813(u) of Title 12 of the United States Code.

(C) Any federal credit union or state credit union, as defined in Section 1752 of Title 12 of the United States Code, including an institution-affiliated party of a credit union, as defined in Section 1786(r) of Title 12 of the United States Code.

(b) The amount of tax to be withheld shall be computed by applying a rate of 7 percent to the reportable payment.

(c) Where withholding under both this section and other provisions of this article would otherwise be required, withholding shall only be required under this section.

(d) Any payer required to withhold tax pursuant to this section shall notify the payee of such withholding at a time and in a manner as may be prescribed in forms and instructions by the Franchise Tax Board.

(e) This section shall apply to payments made on or after January 1, 2010.

SEC. 4. The provisions of this measure are severable. If any provision of this measure or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 5. This act addresses the fiscal emergency declared by the Governor by proclamation on July 1, 2009, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

Approved _____, 2009

Governor